Calendar No. 421

99TH CONGRESS
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SENATE

REPORT
99-191

AUTHORIZING THE CHEROKEE NATION OF OKLAHOMA TO LEASE CERTAIN LANDS HELD IN TRUST FOR UP TO 99 YEARS

NOVEMBER 19 (legislative day, NOVEMBER 18), 1985.—Ordered to be printed

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Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1728]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1728) to authorize the Cherokee Nation of Oklahoma to lease certain lands held in trust for up to 99 years, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

The amendment is as follows:

On page 2, after line 3, add the following:

SEC. 3. CERTAIN CIVIL SERVICE BENEFITS FOR FORMER FEDERAL EMPLOYEES WORKING FOR INDIAN TRIBES.

(a) Subsection (e) of section 105 of the Indian Self-Determination Act (25 U.S.C. 450i(a)) is amended by striking out "1985" and inserting instead "1988".

(b) Section 210(a)(5)(B)(i) of the Social Security Act (42 U.S.C. 410(a)(5)(B)(i)) and section 3121(b)(5)(B)(i) of the Internal Revenue Code of 1954 are each amended—

(1) by striking out "and" at the end of subclause (III),

(2) by striking out "; or" at the end of the subclause (IV) and inserting in lieu thereof ", and", and

(3) by adding after subclause (IV) the following:

"(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to which section 105(e)(2) of

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the Indian Self-Determination Act applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or"

(c) The amendments made by subsection (b) apply to any return to the performance of service in the employ of the United States, or of an instrumentality thereof, after 1983.

PURPOSE

S. 1728 would amend the Act of August 9, 1955 (25 U.S.C. 415), to authorize the Cherokee Nation of Oklahoma to lease for ninety-nine years lands held in trust by the United States.

At present, the Cherokee Nation has authority only to lease land for a twenty-five year period, renewable for another twenty-five years. All leases require the approval of the Secretary of the Interior as trustee.

Enactment of S. 1728 will enable the Tribe to enter into a fifty-year lease, renewable for forty-nine years, for a total period of ninety-nine years. Many other tribes have this authority.

Passage of the bill will settle litigation between the Tribe and the Muskogee City/County Port Authority by permitting the Tribe to lease the Arkansas River bottom to the Authority for a longer period than presently permitted.

With the proposed amendment the time for terminating certain BIA employees' retirement rights is extended until 1988.

BACKGROUND

In 1835, about the time of the "Trail of Tears," the United States granted fourteen million acres in what is now northeastern Oklahoma to the Cherokee Nation. The land included the Arkansas River in its entirety, the lower branch of which forms the border between the Cherokees to the north and the Choctaws and Chickasaws to the south.

After the Allotment Act of 1889, their land was diminished. Since that time, there have been arguments about who owns the riverbed which should have ended with the Supreme Court ruling in *Choctaw Nation of Oklahoma* v. *U.S.* The Court stated "that the United States intended to, and did convey, title to the bed of the Arkansas River. * * *" Of course, the Court also pointed out that the United States had a navigational easement under the Commerce Clause of the Constitution. This qualifying statement by the Court perhaps formed a basis for further litigation, both between the Tribe and the Port Authority and, also, the United States. This bill will settle the cases between the Tribe and the Port Authority. It will not, however, settle the case between the Tribe and the United States which is still pending. However, even if the Tribe does not prevail in the remaining case, the case against the Port Authority will have been settled and commerce on the Arkansas River will not be impeded.

This bill will enable the Tribe to lease land that is adjoining the river and in the river bottom to the Muskogee Port Authority for $50,000 for a primary term of 50 years with an option for an addi-

tional 49 years for an additional $50,000. Under present law, as set forth in 25 CFR 162.8(a), they would be limited to 25 years.

There is presently litigation regarding the leasing of the riverbed for mineral exploration.

LEGISLATIVE HISTORY

S. 1728 was introduced by Senator Nickles, for himself and Senator Boren on October 2, 1985. A companion bill, H.R. 3444, had been introduced on September 26, 1985, by Representative Synar, for himself and Representative Jones. That bill is identical to S. 1728. The Select Committee on Indian Affairs held a hearing on October 23, 1985. Testimony was presented by the Administration, the Cherokee Nation and two other tribes.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on November 7, 1985, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1728, as amended.

COMMITTEE AMENDMENT

The Committee recommends an amendment. Section 3 amends section 105(e) of the Indian Self-Determination and Education Assistance Act to extend to 1988, the termination date of the authority for Federal employees to elect to retain certain of their employee rights and benefits when they become employed by a tribe. Section 3 also amends section 210(b)(5)(B)(i) of the Social Security Act and section 3121(b)(5)(B)(i) of the Internal Revenue Code of 1954 to permit persons who have left Federal employment to work for Indian tribes or tribal organizations or Alaska Native entities under the provisions of the Indian Self-Determination and Education Assistance Act to be exempted from the requirements that they participate in the Social Security program when a tribe retrocedes a contract or the Secretary of the Department of Health and Human Services reassumes the health service function.

SECTION-BY-SECTION ANALYSIS

There are two sections. Section 1 authorizes the leases to extend to 99 years. Section 2 is the amendment described above.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1728, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 12, 1985.

Hon. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1728, the Cherokee Leasing Act, as amended and ordered

reported by the Senate Select Committee on Indian Affairs, November 7, 1985.

We estimate that enactment of this bill would result in no significant cost to the federal government, and in no cost to state or local governments. Section 2 of the bill would enable the Cherokee Nation to enter into a 50-year lease, renewable for 49 years, of lands held in trust by the United States. Currently, authority exists only for 25-year leases, renewable for an additional 25 years. Section 3 would extend through calendar year 1988 the option of federal employees hired by Indian tribes, tribal organizations, or Alaska Native entities, to retain civil service benefits. The costs of those benefits, formerly borne by the federal government, are to be borne by the employer. This section also ensures that any such former federal employes rehired by the federal government would retain the benefit status of their previous federal employment. This provision would affect relatively few employees, and would not have a significant budget impact.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner).

EXECUTIVE COMMUNICATIONS

The only Executive Communication received by the Committee was in the form of testimony offered at the October 23, 1985 hearing by Hazel E. Elbert, Acting Deputy Assistant Secretary for Indian Affairs, Department of the Interior. The statement follows:

> STATEMENT OF HAZEL E. ELBERT, ACTING DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S. 1728, A BILL "TO AUTHORIZE THE CHEROKEE NATION OF OKLAHOMA TO LEASE CERTAIN LANDS HELD IN TRUST FOR UP TO 99 YEARS"
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> Mr. Chairman, I am pleased to be here to present the views of the Department of the Interior on S. 1728, a bill "To authorize the Cherokee Nation of Oklahoma to lease certain lands held in trust for up to ninety-nine years."
>
> We support the enactment of S. 1728.
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> S. 1728 would amend the Act of August 9, 1955 (25 U.S.C. 415), to authorize the Cherokee Nation of Oklahoma to lease for ninety-nine years, the lands held in trust by the United States. The Cherokee Nation is governed by a tribal constitution which was approved on September 5, 1975 by the Commissioner of Indian Affairs.
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> Although the Cherokee Nation has existing authority to lease (with the Secretary's approval) its lands for a 25-year period, with an additional 25-year renewal, S. 1728 would grant it the authority to lease its trust lands for up to

ninety-nine years. A number of other tribes have similar authority under the provisions of 25 U.S.C. 415.

Enactment of S. 1728 would enable the Tribe to enter into a lease with the Muskogee City/County Port Authority for a 99-year period. The agreement, in effect, would serve to satisfy a dispute between the Cherokee Nation and the Port Authority.

A lease between the Cherokee Nation and the Muskogee City/County Port Authority has been approved for a 25-year period, with an option to renew for an additional 25 years. The permit covers approximately three acres. On execution of the 99-year lease, the pending litigation between the parties in the United States District Court for the Eastern District of Oklahoma, Case No. 81-318-C, and on appeal to the United States Court of Appeals, Tenth Circuit, under No. 83-2325, entitled *Cherokee Nation of Oklahoma* v. *Muskogee City/County Port Authority,* would be dismissed.

This concludes my prepared statement. I will now be happy to answer any questions you might have.

REGULATORY IMPACT STATEMENT

Paragraph II(B) of the Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1728, as amended, will have no regulatory or paperwork impact.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states as follows: It is the opinion of the Committee that it is necessary to dispense with the requirements of this subsection to expedite the business of the Senate.

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